IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7081 OF 2004

Mr.Shriram S. Kulkarni for the Petitioner.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 6TH JULY,2005

P.C.:

1. The Petitioner is the Defendant in a suit filed under the Trademark Act on the allegation of passing of the trademark. There is also criminal prosecution pending against the Petitioner, according to the Petitioner, on the same allegation. Therefore, he filed an application for stay of the proceedings in the civil suit. That application is rejected by the impugned order. The learned Counsel appearing for the Petitioner relying on the judgment of the learned Single Judge in the

case of Arvind Kalidas Wadodkar v/s. Ramdas Devidas Joshi, 1996 (2) Mh.L.J., 907, the judgment of another learned Single Judge in the case of Ramanand Nanakram Ladda and anr. v/s. Dr.Kacharulal Amolakchand Lodha, 1998 (2) Mh.L.J., 12, and the judgment of the Supreme Court in the case of M.S.Sheriff v/s. State of Madras, AIR 1954 SC 397 submits that simultaneous prosecution of criminal trial and civil suit will embarrass the Petitioner and therefore the trial of the suit could have been stayed.

2. Perusal of the judgment of the Supreme Court referred to above in M.S.Sheriff's case shows that the civil proceedings are to be stayed when criminal prosecution on the same allegation is also pending because there is likelihood of embarrassment to the Defendant in a civil suit. In my opinion, embarrassment would be that the accused will be required to disclose his defence in case he has to file written statement in the civil suit. In so far as the present case is

concerned, admittedly the Petitioner has already filed his written statement and therefore he has already disclosed his defence. Therefore, in my opinion, there is no question of any embarrassment being caused to the Defendant/Petitioner. The learned Counsel appearing for the Petitioner submits that though the defence has been disclosed, material in support of that defence has not been disclosed. That will be required to be disclosed when the trial of the suit goes on. In my opinion, once written statement is filed and defence is disclosed, there is no question of there being any embarrassment caused to the accused. Protection by stay of the civil proceedings is to be made to the accused, so that he is not forced to disclose his defence, because disclosure of his defence in the civil court can be taken advantage by prosecution in the criminal trial. But once that defence is disclosed, there is no question of there being any embarrassment caused to the Defendant in the trial of the

civil suit. Hence, the petition is rejected.

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